

SENATE SUBSTITUTE (#2)

FOR

HOUSE BILL NO. 34

AN ACT

To repeal sections 290.210, 290.260, and 290.262, RSMo,
and to enact in lieu thereof three new sections
relating to prevailing wage.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 290.210, 290.260, and 290.262, are
2 repealed and three new sections enacted in lieu thereof, to be
3 known as sections 290.210, 290.260, and 290.262, to read as
4 follows:

5 290.210. As used in sections 290.210 to 290.340, unless the
6 context indicates otherwise:

7 (1) "Adjacent county", any Missouri county of the third or
8 fourth classification having a boundary that, at any point,
9 touches any boundary of the locality for which the wage rate is
10 being determined;

11 (2) "Collective bargaining agreement" means any written
12 agreement or understanding between an employer or employer
13 association and a labor organization or union which is the
14 exclusive bargaining representative of the employer's or employer
15 association's employees pursuant to the terms of the National
16 Labor Relations Act and which agreement or understanding or
17 predecessor agreement or understanding has been used to determine
18 an occupational title wage rate;

19 (3) "Construction" includes construction, reconstruction,

1 improvement, enlargement, alteration, painting and decorating, or
2 major repair[.];

3 [(2)] (4) "Department" means the department of labor and
4 industrial relations[.];

5 (5) "Labor organization" or "union" means any entity which
6 has been designated pursuant to the terms of the National Labor
7 Relations Act as the exclusive bargaining representative of
8 employees of employers engaged in the construction industry,
9 which entity or affiliated entity has ever had a collective
10 bargaining agreement which determined an occupational title wage
11 rate;

12 [(3)] (6) "Locality" means the county where the physical
13 work upon public works is performed[, except that if there is not
14 available in the county a sufficient number of competent skilled
15 workmen to construct the public works efficiently and properly,
16 "locality" may include two or more counties adjacent to the one
17 in which the work or construction is to be performed and from
18 which such workers may be obtained in sufficient numbers to
19 perform the work, and that, with respect to contracts with the
20 state highways and transportation commission, "locality" may be
21 construed to include two or more adjacent counties from which
22 workmen may be accessible for work on such construction.];

23 [(4)] (7) "Maintenance work" means the repair, but not the
24 replacement, of existing facilities when the size, type or extent
25 of the existing facilities is not thereby changed or
26 increased[.];

27 [(5)] (8) "Prevailing hourly rate of wages" means the wages
28 paid generally, in the locality in which the public works is

1 being performed, to workmen engaged in work of a similar
2 character including the basic hourly rate of pay and the amount
3 of the rate of contributions irrevocably made [by a contractor or
4 subcontractor to a trustee or to a third person pursuant] to a
5 fund, plan or program, and the amount of the rate of costs to the
6 contractor or subcontractor which may be reasonably anticipated
7 in providing benefits to workmen and mechanics pursuant to an
8 enforceable commitment to carry out a financially responsible
9 plan or program which was communicated in writing to the workmen
10 affected, for medical or hospital care, pensions on retirement or
11 death, compensation for injuries or illness resulting from
12 occupational activity, or insurance to provide any of the
13 foregoing, for unemployment benefits, life insurance, disability
14 and sickness insurance, accident insurance, for vacation and
15 holiday pay, for defraying costs of apprenticeship or other
16 similar programs, or for other bona fide fringe benefits, but
17 only where the contractor or subcontractor is not required by
18 other federal or state law to provide any of the benefits;
19 provided, that the obligation of a contractor or subcontractor to
20 make payment in accordance with the prevailing wage
21 determinations of the department, insofar as sections 290.210 to
22 290.340 are concerned, may be discharged by the making of
23 payments in cash, by the making of irrevocable contributions [to
24 trustees or third persons as provided herein,] by the assumption
25 of an enforceable commitment to bear the costs of a plan or
26 program as provided herein, or any combination thereof, where the
27 aggregate of such payments, contributions and costs is not less
28 than the rate of pay plus the other amounts as provided

herein[.];

[(6)] (9) "Previous six annual wage order reporting periods" means the current annual wage order reporting period under consideration for wage rate determinations and the five immediately preceding annual wage order reporting period;

(10) "Public body" means the state of Missouri or any officer, official, authority, board or commission of the state, or other political subdivision thereof, or any institution supported in whole or in part by public funds[.];

[(7)] (11) "Public works" means all fixed works constructed for public use or benefit or paid for wholly or in part out of public funds. It also includes any work done directly by any public utility company when performed by it pursuant to the order of the public service commission or other public authority whether or not it be done under public supervision or direction or paid for wholly or in part out of public funds when let to contract by said utility. It does not include any work done for or by any drainage or levee district[.];

[(8)] (12) "Workmen" means laborers, workmen and mechanics.

290.260. 1. The department, as it deems necessary, shall from time to time investigate and determine the prevailing hourly rate of wages for heavy and highway construction work in the localities. In doing so, the department shall accept and consider information regarding local wage rates that is submitted in either paper or electronic formats. A determination applicable to every locality to be contained in a general wage order shall be made annually on or before July first of each year for the Missouri state highways and transportation commission and

1 shall remain in effect until superseded by a new general wage
2 order. In determining prevailing rates, the department shall
3 ascertain and consider the applicable wage rates established by
4 collective bargaining agreements, if any, and the rates that are
5 paid generally within the locality.

6 2. A certified copy of the determination so made shall be
7 filed immediately with the secretary of state and with the
8 department in Jefferson City. Copies shall be supplied by the
9 department to all persons requesting them within ten days after
10 the filing.

11 3. At any time within thirty days after the certified
12 copies of the determinations have been filed with the secretary
13 of state and the department, any person who is affected thereby
14 may object in writing to the determination or the part thereof
15 that he deems objectionable by filing a written notice with the
16 department, stating the specific grounds of the objection.

17 4. Within thirty days of the receipt of the objection, the
18 department shall set a date for a hearing on the objection. The
19 date for the hearing shall be within sixty days of the receipt of
20 the objection. Written notice of the time and place of the
21 hearing shall be given to the objectors at least ten days prior
22 to the date set for the hearing.

23 5. The department at its discretion may hear each written
24 objection separately or consolidate for hearing any two or more
25 written objections. At the hearing the department shall first
26 introduce in evidence the investigation it instituted and the
27 other facts which were considered at the time of the original
28 determination which formed the basis for its determination. The

1 department, or the objector, or any interested party, thereafter
2 may introduce any evidence that is material to the issues.

3 6. Within twenty days of the conclusion of the hearing, the
4 department must rule on the written objection and make the final
5 determination that it believes the evidence warrants.

6 Immediately, the department shall file a certified copy of its
7 final determination with the secretary of state and with the
8 department and shall serve a copy of the final determination on
9 all parties to the proceedings by personal service or by
10 registered mail.

11 7. This final decision of the department of the prevailing
12 wages in the locality is subject to review in accordance with the
13 provisions of chapter 536. Any person affected, whether or not
14 the person participated in the proceedings resulting in the final
15 determination, may have the decision of the department reviewed.
16 The filing of the final determination with the secretary of state
17 shall be considered a service of the final determination on
18 persons not participating in the administrative proceedings
19 resulting in the final determination.

20 8. At any time before trial any person affected by the
21 final determination of the department may intervene in the
22 proceedings to review under chapter 536 and be made a party to
23 the proceedings.

24 9. All proceedings in any court affecting a determination
25 of the department under the provisions of sections 290.210 to
26 290.340 shall have priority in hearing and determination over all
27 other civil proceedings pending in the court, except election
28 contests.

1 290.262. 1. Except as otherwise provided in section
2 290.260, the department shall annually [investigate and]
3 determine the prevailing hourly rate of wages in each locality
4 for each separate occupational title. In doing so, the
5 department shall accept and consider information regarding local
6 wage rates that is submitted in either paper or electronic
7 formats. A final determination applicable to every locality to
8 be contained in an annual wage order shall be made annually on or
9 before July first of each year and shall remain in effect until
10 superseded by a new annual wage order or as otherwise provided in
11 this section. [In determining prevailing rates, the department
12 shall ascertain and consider the applicable wage rates
13 established by collective bargaining agreements, if any, and the
14 rates that are paid generally within the locality, and] The
15 department shall, by March tenth of each year, make an initial
16 determination for each occupational title within the locality.

17 2. The prevailing wage rate for an occupational title in a
18 locality shall, with the exception of localities that are
19 counties of the third and fourth classification and any county of
20 the second classification with more than fifty-eight thousand but
21 fewer than sixty-five thousand inhabitants, be the wage rate most
22 commonly paid, as measured by the number of hours worked at each
23 wage rate, for that occupational title within that locality. In
24 determining such prevailing wage rates, the department shall
25 ascertain and consider the applicable wage rates established by
26 collective bargaining agreements, if any, when no wages were
27 reported.

28 3. With respect only to localities that are counties of the

third and fourth classification and any county of the second classification with more than fifty-eight thousand but fewer than sixty-five thousand inhabitants, the prevailing wage rate for an occupational title within such locality shall be determined in the following manner:

(1) The total number of hours worked that are not paid pursuant to a collective bargaining agreement for the time period in that occupational title in the locality and the total number of hours worked that are paid pursuant to a collective bargaining agreement for the time period in that occupational title in the locality shall be considered;

(2) If the total number of hours that are not paid pursuant to a collective bargaining agreement, in the aggregate, exceeds the total number of hours that are paid pursuant to such an agreement, in the aggregate, then the prevailing wage rate shall be the rate most commonly paid that is not paid pursuant to a collective bargaining agreement as measured by the number of hours worked at such rate for that occupational title within the locality;

(3) If the total number of hours that are paid pursuant to a collective bargaining agreement, in the aggregate, exceeds the total number of hours that are not paid pursuant to such an agreement, in the aggregate, then the prevailing wage rate shall be the rate most commonly paid that is paid pursuant to a collective bargaining agreement as measured by the number of hours worked at such rate for that occupational title within the locality;

(4) If no work within a particular occupational title has

1 been performed in a locality at any wage rate, the prevailing
2 wage rate for that occupational title in that locality shall be
3 determined in the following manner:

4 (a) If wages were reported for an occupational title within
5 a locality within the previous six annual wage order reporting
6 periods and the prevailing wage rate was determined by a
7 collective bargaining agreement by hours worked pursuant to such
8 agreement in the most recent annual wage order reporting period
9 where such wages were reported, then the wage rate paid pursuant
10 to the current collective bargaining agreement shall be the
11 prevailing rate for that occupational title within the locality;

12 (b) If wages were reported for an occupational title within
13 a locality within the previous six annual wage order reporting
14 periods and the prevailing wage rate was not determined by hours
15 worked pursuant to a collective bargaining agreement in the most
16 recent annual wage order reporting period where such wages were
17 reported, then the wage rate paid in the most recent annual wage
18 order reporting period when such wages were reported shall be the
19 prevailing wage rate for that occupational title within the
20 locality;

21 (c) If no wages were reported for an occupational title
22 within a locality within the previous six annual wage order
23 reporting periods, the department shall examine hours and wages
24 reported in all adjacent Missouri counties during the same
25 periods. The most recent reported wage rate in a given wage
26 order period in the adjacent Missouri county with the most
27 reported hours actually worked for that occupational title in the
28 wage period during the previous six annual wage order reporting

1 periods shall be used to determine the prevailing wage rate;

2 (d) If no wages were reported for an occupational title
3 within any adjacent Missouri county within the previous six
4 annual wage order reporting periods, then the rate paid pursuant
5 to the current collective bargaining agreement shall be the
6 prevailing wage rate for that occupational title within the
7 locality.

8 4. A certified copy of the initial determinations so made
9 shall be filed immediately with the secretary of state and with
10 the department in Jefferson City. Copies shall be supplied by
11 the department to all persons requesting them within ten days
12 after the filing.

13 [3.] 5. At any time within thirty days after the certified
14 copies of the determinations have been filed with the secretary
15 of state and the department, any person who is affected thereby
16 may object in writing to a determination or a part thereof that
17 he deems objectionable by filing a written notice with the
18 department, stating the specific grounds of the objection. If no
19 objection is filed, the determination is final after thirty days.

20 [4.] 6. After the receipt of the objection, the department
21 shall set a date for a hearing on the objection. The date for
22 the hearing shall be within sixty days of the receipt of the
23 objection. Written notice of the time and place of the hearing
24 shall be given to the objectors at least ten days prior to the
25 date set for the hearing.

26 [5.] 7. The department at its discretion may hear each
27 written objection separately or consolidate for hearing any two
28 or more written objections. At the hearing the department shall

1 first introduce in evidence the investigation it instituted and
2 the other facts which were considered at the time of the original
3 determination which formed the basis for its determination. The
4 department, or the objector, or any interested party, thereafter
5 may introduce any evidence that is material to the issues.

6 [6.] 8. Within twenty days of the conclusion of the
7 hearing, the department shall rule on the written objection and
8 make the final determination that it believes the evidence
9 warrants. Immediately, the department shall file a certified
10 copy of its final determination with the secretary of state and
11 with the department and shall serve a copy of the final
12 determination on all parties to the proceedings by personal
13 service or by registered mail.

14 [7.] 9. This final decision of the department of the
15 prevailing wages in the locality for each occupational title is
16 subject to review in accordance with the provisions of chapter
17 536. Any person affected, whether or not the person participated
18 in the proceedings resulting in the final determination, may have
19 the decision of the department reviewed. The filing of the final
20 determination with the secretary of state shall be considered a
21 service of the final determination on persons not participating
22 in the administrative proceedings resulting in the final
23 determination.

24 [8.] 10. At any time before trial any person affected by
25 the final determination of the department may intervene in the
26 proceedings to review under chapter 536 and be made a party to
27 the proceedings.

28 [9.] 11. Any annual wage order made for a particular

1 occupational title in a locality, that is based on the number of
2 hours worked under a collective bargaining agreement, may be
3 altered once each year, as provided in this subsection. The
4 prevailing wage for each such occupational title may be adjusted
5 on the anniversary date of any collective bargaining agreement
6 which covers all persons in that particular occupational title in
7 the locality in accordance with any annual incremental wage
8 increases set in the collective bargaining agreement. If the
9 prevailing wage for an occupational title is adjusted pursuant to
10 this subsection, the employee's representative or employer in
11 regard to such collective bargaining agreement shall notify the
12 department of this adjustment, including the effective date of
13 the adjustment. The adjusted prevailing wage shall be in effect
14 until the next final annual wage order is issued pursuant to this
15 section. The wage rates for any particular job, contracted and
16 commenced within sixty days of the contract date, which were set
17 as a result of the annual or revised wage order, shall remain in
18 effect for the duration of that particular job.

19 [10.] 12. In addition to all other reporting requirements
20 of sections 290.210 to 290.340, each public body which is
21 awarding a contract for a public works project shall, prior to
22 beginning of any work on such public works project, notify the
23 department, on a form prescribed by the department, of the scope
24 of the work to be done, the various types of craftsmen who will
25 be needed on the project, and the date work will commence on the
26 project.